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10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 SYBIL ASHLEY NEY, R.N.  
2327 Calle Balandra  
15 San Clemente, CA 92673

16 Registered Nurse License No. 657925

17 Respondent.  
18

Case No. 2008-115

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

19 FINDINGS OF FACT

20 1. On or about October 4, 2007, Complainant Ruth Ann Terry, M.P.H., R.N.,  
21 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs, filed Accusation No. 2008-115 against Sybil Ashley Ney, R.N.  
23 (Respondent) before the Board of Registered Nursing.

24 2. On or about May 24, 2005, the Board of Registered Nursing (Board)  
25 issued Registered License Nurse No. 657925 to Respondent. The Registered Nurse license was  
26 in full force and effect at all times relevant to the charges brought herein and will expire on  
27 September 30, 2008, unless renewed.

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1                   3.       On or about October 16, 2007, Kim Cooney, an employee of the  
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
3 2008-115, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,  
5 which was and is 2327 Calle Balandra, San Clemente, CA 92673. A copy of the Accusation is  
6 attached as Exhibit A, and is incorporated herein by reference.

7                   4.       Service of the Accusation was effective as a matter of law under the  
8 provisions of Government Code section 11505, subdivision (c).

9                   5.       On or about November 27, 2007, after failing to receive a Notice of  
10 Defense from Respondent, Respondent was re-served with the Accusation at an address listed in  
11 two of her arrest reports, which was: 305 Via Presa, San Clemente, CA 92672.

12                  6.       The re-service of the Accusation was effective as a matter of law under the  
13 provisions of Government Code section 11505, subdivision (c).

14                  7.       On or about December 6, 2007 and December 10, 2007, the  
15 aforementioned documents were returned by the U.S. Postal Service marked "Forward Time  
16 Expired - Return to Sender."

17                  8.       Government Code section 11506 states, in pertinent part:

18                  ....

19                       (c) The respondent shall be entitled to a hearing on the merits if the  
20 respondent files a notice of defense, and the notice shall be deemed a specific  
21 denial of all parts of the accusation not expressly admitted. Failure to file a notice  
of defense shall constitute a waiver of respondent's right to a hearing, but the  
agency in its discretion may nevertheless grant a hearing.

22                  9.       Respondent failed to file a Notice of Defense within 15 days after service  
23 upon her of the Accusation, and therefore waived her right to a hearing on the merits of  
24 Accusation No. 2008-115.

25                  10.       California Government Code section 11520 states, in pertinent part:

26                       (a) If the respondent either fails to file a notice of defense or to appear at  
27 the hearing, the agency may take action based upon the respondent's express  
28 admissions or upon other evidence and affidavits may be used as evidence without  
any notice to respondent.

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default finds that the allegations in Accusation No. 2008-115 are true.

12. The total costs for investigation and enforcement are **\$696.00** as of December 17, 2007.

### DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Sybil Ashley Ney, R.N., has subjected her Registered Nurse License No. 657925 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse based upon the following violations alleged in the Accusation:

a. On or about March 6, 2007, in a criminal proceeding entitled *People v. Sybil A. Ney*, in Orange County Superior Court, Harbor Justice Center (Laguna Niguel), Case No. 06SM04753, Respondent was convicted on her plea of guilty of violating Vehicle Code sections 23153, subdivision (b), driving with a blood alcohol content (BAC) of more than 0.8% causing bodily injury, a misdemeanor; and 12500, subdivision (a), driving a motor vehicle without a valid license, a misdemeanor.

b. Respondent violated section 2762, subdivision (b) of the Business and Professions Code in that on or about March 6, 2007, Respondent plead guilty and was convicted of driving under the influence of alcohol and causing injuries on September 22, 2006. Respondent's alcohol use was dangerous and injurious to herself and the public and constituted *unprofessional conduct*.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 657925, heretofore issued to Respondent Sybil Ashley Ney, R.N., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 27, 2008.

It is so ORDERED February 27, 2008.

*LaTranene N Tate*

FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

DOJ docket number:SD2007802446

Attachments: Accusation No. 2008-115



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11 **BOARD OF REGISTERED NURSING**  
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13 In the Matter of the Accusation Against:

Case No. 2008-115

14 SYBIL ASHLEY NEY, R.N.  
2327 Calle Balandra  
15 San Clemente, CA 92673

**A C C U S A T I O N**

16 Registered Nurse License No. 657925

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely  
22 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
23 of Consumer Affairs.

24 2. On or about May 24, 2005, the Board of Registered Nursing issued  
25 Registered Nurse License Number 657925 to Sybil Ashley Ney, R.N. (Respondent). The  
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on September 30, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent

1 or in a manner dangerous or injurious to himself or herself, any other person, or  
2 the public or to the extent that such use impairs his or her ability to conduct with  
3 safety to the public the practice authorized by his or her license.

4 8. Section 490 of the Code states:

5 A board may suspend or revoke a license on the ground that the licensee  
6 has been convicted of a crime, if the crime is substantially related to the  
7 qualifications, functions, or duties of the business or profession for which the  
8 license was issued. A conviction within the meaning of this section means a plea  
9 or verdict of guilty or a conviction following a plea of nolo contendere. Any  
10 action which a board is permitted to take following the establishment of a  
11 conviction may be taken when the time for appeal has elapsed, or the judgment of  
12 conviction has been affirmed on appeal, or when an order granting probation is  
13 made suspending the imposition of sentence, irrespective of a subsequent order  
14 under the provisions of Section 1203.4 of the Penal Code.

15 9. Section 493 of the Code states:

16 Notwithstanding any other provision of law, in a proceeding conducted by  
17 a board within the department pursuant to law to deny an application for a license  
18 or to suspend or revoke a license or otherwise take disciplinary action against a  
19 person who holds a license, upon the ground that the applicant or the licensee has  
20 been convicted of a crime substantially related to the qualifications, functions, and  
21 duties of the licensee in question, the record of conviction of the crime shall be  
22 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
23 and the board may inquire into the circumstances surrounding the commission of  
24 the crime in order to fix the degree of discipline or to determine if the conviction  
25 is substantially related to the qualifications, functions, and duties of the licensee in  
26 question.

27 As used in this section, "license" includes "certificate," "permit,"  
28 "authority," and "registration."

10. Section 125.3 of the Code provides, in pertinent part, that the Board may  
request the administrative law judge to direct a licentiate found to have committed a violation or  
violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
and enforcement of the case.

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the  
qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. . . .

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12. California Code of Regulations, Title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### **FIRST CAUSE FOR DISCIPLINE**

**(March 6, 2007 Criminal Conviction for DUI With Injuries on September 22, 2006)**

13. Respondent has subjected her license to disciplinary action under sections 490 and 2761(f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a Registered Nurse. The circumstances are as follows:

a. On or about March 6, 2007, in a criminal proceeding entitled *People v. Sybil A. Ney*, in Orange County Superior Court, Harbor Justice Center (Laguna Niguel), Case No. 06SM04753, Respondent was convicted on her plea of guilty of violating Vehicle Code sections 23153(b), driving with a blood alcohol content (BAC) of more than 0.8% causing bodily injury, a misdemeanor; and 12500(a), driving a motor vehicle without a valid license, a misdemeanor.

b. As a result of the conviction, on or about March 6, 2007, Respondent was sentenced to five days in the county jail (with credit given for five days in a

1 residential treatment program), three years informal probation, and payment of fines, fees, and  
2 restitution in the amount of \$597.00. Respondent's driver's license was suspended pending  
3 completion of a DMV alcohol program. Respondent was also required to abstain from alcohol  
4 use, attend and complete a nine-month level 2 First Offender Alcohol Program, attend and  
5 complete a MADD Victim's Impact Panel, and complete a 20-day CalTrans work program.

6 c. The circumstances that led to the conviction were that on or about  
7 the morning of September 22, 2006, the California Highway Patrol (CHP) responded to a report  
8 of a traffic collision with injuries on southbound Interstate 5 in the city of San Clemente. Based  
9 upon interviews with numerous witnesses, the opinion and conclusion of the CHP officer was  
10 that Respondent rear-ended another vehicle two times before both vehicles came to a stop near  
11 the freeway off-ramp. Respondent was transported by ambulance to a nearby hospital where the  
12 CHP officer interviewed Respondent in the emergency room. He observed that she had an odor  
13 of alcohol coming from her breath, her eyes were watery and bloodshot, and her speech was  
14 incoherent and slurred. The officer attempted to administer pre-Field Sobriety Test questions,  
15 but Respondent was belligerent and crying and refused to cooperate. Two breath samples  
16 registered a blood alcohol content (BAC) of 0.333 and 0.340. Respondent submitted to a blood  
17 test. In her plea agreement, Respondent admitted driving with a BAC of 0.36, four times the  
18 legal limit. Respondent was not licensed to drive in California. Additionally, the driver of the  
19 vehicle she rear-ended suffered injuries and major vehicle damage as a result of the collision.

## 20 21 SECOND CAUSE FOR DISCIPLINE

### 22 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner on September 22, 2006)**

23 14. Respondent has subjected her license to disciplinary action under section  
24 2762(b) of the Code in that on or about March 6, 2007, Respondent plead guilty and was  
25 convicted of driving under the influence of alcohol and causing injuries on September 22, 2006,  
26 as described in paragraph 13, above. Respondent's alcohol use was dangerous and injurious to  
27 herself and the public.

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